

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ADAM FERRARI,

Plaintiff,

V.

WILLIAM FRANCIS,

Defendant.

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No. 3:23-cv-455-S-BN

SUPPLEMENT TO SCHEDULING ORDER AND AMENDED SCHEDULING ORDER

The United States Court of Appeals for the Fifth Circuit recently explained that, in a diversity case under 28 U.S.C. § 1332,

- “[a]t the pleading stage, the party invoking the federal court’s jurisdiction must allege the citizenship of each” party;
- “[a]t the summary judgment stage,” the party invoking the federal court’s jurisdiction “must provide evidence sufficient to support a jury finding of the citizenship of” each party; and,
- “at trial,” the party invoking the federal court’s jurisdiction “must prove the citizenship of each” party.

Megalomedia Inc. v. Philadelphia Indem. Ins. Co., 115 F.4th 657, 659 (5th Cir. 2024) (published order); *accord J.A. Masters Invs. v. Beltramini*, 117 F.4th 321, 323 (5th Cir. 2024) (published order); *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 315 n.* (5th Cir. 2019).

The Fifth Circuit has also long held that district courts can and should do their own fact-finding and final determinations on their subject-matter jurisdiction over a case at any stage, including before summary judgment. *See Dillon v. Rogers*, 596 F.3d

260, 271 (5th Cir. 2010) (“Judges have the power to resolve certain threshold issues without the participation of a jury before the adjudication of a case on its merits. For example, when subject matter jurisdiction over a case turns on disputed facts, judges have the power to resolve these disputes in assuring themselves of their courts’ jurisdiction.”); *Edwards v. Associated Press*, 512 F.2d 258, 262 n.8 (5th Cir. 1975) (“Consideration of affidavits and, where necessary, the taking of testimony are appropriate means for resolving jurisdictional disputes.”).

And, when district courts determine “the existence of subject matter jurisdiction in fact,” the courts do not proceed under the strictures, burdens, or standards that apply to motions under Federal Rules of Procedure 12(b)(6) and 56, such as attaching “presumptive truthfulness ... to [a] plaintiff’s [or removing defendant’s] allegations.” *Chatham Condo. Associations v. Century Vill., Inc.*, 597 F.2d 1002, 1012 (5th Cir. 1979) (cleaned up). A district court is instead “free to weigh the evidence and satisfy itself as to the existence of its power to hear the case”; “the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims”; and the party invoking the federal court’s jurisdiction “will have the burden of proof that jurisdiction does in fact exist.” *Id.* (cleaned up).

To comply with this governing law, in this diversity case under 28 U.S.C. § 1332, the Court now orders that, as a supplement to the Court’s Scheduling Order [Dkt. No. 29] and Amended Scheduling Order [Dkt. No. 71],

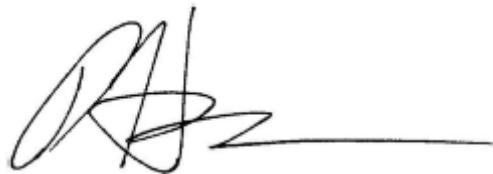
- the party invoking the federal court’s jurisdiction must include, in any summary judgment motion or response that the party files, evidence

that is at least sufficient to support a jury finding of the citizenship of each party but – better yet (to the extent there is a difference in degree here) – evidence that is sufficient for the court to evaluate and determine on its own the citizenship of each party; and

- the party invoking the federal court’s jurisdiction must also include, in any summary judgment motion or response that the party files, a section of its supporting brief that addresses the necessary jurisdictional facts regarding each party’s citizenship under Section 1332(a) and the supporting evidence submitted to support the Court’s determinations.

SO ORDERED.

DATED: October 30, 2024

A handwritten signature in black ink, appearing to be 'DH' followed by a long horizontal line.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE